

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

UNITED STATES

v.

DONALD MARCELL RIVERS, JR.,

Defendant

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Case No. DKC-18-066

MOTION TO SEVER DEFENDANTS

Donald Rivers, Jr., the Defendant, by and through his attorney, Katherine Tang Newberger, Office of the Federal Public Defender, respectfully moves this Honorable Court to sever defendants. In support of this motion, counsel states the following:

PROCEDURAL AND FACTUAL HISTORY

1. Mr. Rivers, along with Timothy Michael McLain and Ashley Nicole Collier, is charged in counts 1 through 3 of the superseding indictment with conspiracy to interfere with commerce by robbery, in violation of 18 U.S.C. § 1951(a); armed bank robbery, in violation of 18 U.S.C. § 2113(a); and brandishing a firearm during the bank robbery, in violation of 18 U.S.C. § 924(c). All three charges arise from the robbery of a BB&T Bank on January 9, 2018. Count 4 alleges that on January 9, 2018, Mr. Rivers and Ms. Collier possessed a loaded firearm after having been convicted of committing a crime punishable by more than one year incarceration, in violation of 18 U.S.C. § 922(g)(1). Count 5 charges Mr. Rivers alone with possessing ammunition on November 6, 2017, in violation of 18 U.S.C. § 922(g)(1). By separate motion, the Mr. Rivers moves to sever count 5 from counts 1 through 4.

2. Upon information and belief, at least one of Mr. Rivers' co-defendants made statements to law enforcement that arguably incriminate Mr. Rivers. Introduction of the co-

defendant's statement would violate *Bruton v. United States*, 391 U.S. 123 (1968). Accordingly, on the record as it presently stands, Mr. Rivers is entitled to severance from his co-defendants.

3. In addition, Mr. Rivers may be entitled to a severance because of the disparity in the quantum of evidence against his co-defendants. His co-defendants were both arrested in close proximity to the vehicle in which the police seized much of the evidence that the Government would introduce in their case in chief against the defendants.

4. Furthermore, Mr. Rivers and his codefendants may have conflicting and antagonistic defenses, or a trial with his co-defendants may prejudice some other of Mr. Rivers' trial rights.

CONCLUSION

WHEREFORE, for the reasons stated above and for any others that may arise in later briefing or at a hearing, the Court should grant Mr. Rivers' motion to sever defendants.

Respectfully submitted,

JAMES WYDA
Federal Public Defender

/s/
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REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, the Defendant requests a hearing on this motion.

_____/s/
KATHERINE TANG NEWBERGER (#27803)
Senior Litigation Counsel

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

_____/s/
Katherine Tang Newberger, #27803
Senior Litigation Counsel